

FREDERICK J. SCHLICHER

IBLA 81-314

Decided April 10, 1981

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, denying approval of the assignment of oil and gas lease NM 33678.

Reversed and remanded.

1. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Bona Fide Purchaser

Under 30 U.S.C. § 184(h) (1976), the determination whether an assignee of an oil and gas lease is a bona fide purchaser must be based on the circumstances existing on the date the assignment is effective between the lessee of record and the assignee. An assignee is not required to file the assignment with BLM for approval as a condition of bona fide purchaser status.

Wayne E. Debord, 50 IBLA 216, 87 I.D. 465 (1980), modified.

APPEARANCES: Frederick J. Schlicher, pro se; John H. Harrington, Esq., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Frederick J. Schlicher has appealed the letter decision of the New Mexico State Office, Bureau of Land Management (BLM), dated November 21, 1980, denying approval of the assignment of oil and gas lease NM 33678 from the original lessee, Henry E. Cobb, to himself.

Oil and gas lease NM 33678 had been issued to Henry Cobb effective September 1, 1978. On October 22, 1979, Cobb and his wife executed an

assignment of the lease to appellant. On November 5, 1979, appellant called BLM to ascertain the current status of oil and gas lease NM 33678. Based on information that the lease was in effect and Cobb was the lessee of record, appellant paid Cobb \$ 6,000 for the assignment of the lease. Appellant recorded the assignment in the official oil and gas records of Lea County, New Mexico, on November 14, 1979. He thereafter filed the assignment with BLM for approval on January 9, 1980, which was within the 90-day time period specified by 43 CFR 3106.3-1.

Meanwhile, by decision dated November 28, 1979, BLM canceled lease NM 33678 because Cobb had not complied with the disclosure requirements of 43 CFR 3102.7 when executing and filing his drawing entry card. Cobb appealed and on September 30, 1980, this Board affirmed the cancellation in Wayne E. Debord, 50 IBLA 216, 87 I.D. 465 (1980).

The BLM decision appealed herein indicates that BLM does not consider an assignee to be a bona fide purchaser until the assignment is approved. BLM then concludes that since Cobb's lease was canceled, BLM cannot approve an assignment.

In his statement of reasons, appellant argues that he is a bona fide purchaser of the lease and protected from the effects of Cobb's violation of the regulations. He bases his argument on the fact that on November 5, 1979, when he paid \$ 6,000 to Cobb and actually received delivery of the lease, the BLM records reflected that Cobb was the lessee. He notes that his filing for approval of the assignment was timely and disputes BLM's assertion in its decision that bona fide purchaser status is only recognized as of the date of assignment approval by BLM.

In response, BLM corrects itself by recognizing that under Southwestern Petroleum Corp. v. Udall, 361 F.2d 650 (10th Cir. 1966), approval of an assignment is not necessary to afford bona fide purchaser protection to appellant, but asserts, nevertheless, that it should not have to shoulder the administrative burdens caused by an assignee who delays filing for approval of an assignment. BLM argues that since it is entitled to rely on its own records and the regularity of its proceedings, an assignee should not be protected as a bona fide purchaser unless he has notified BLM of his interest in a lease. Otherwise, urges BLM, "dire consequences" could arise; e.g., issuance of a second lease to another lessee following cancellation of the original lease for violation of the regulations and a subsequent assignment would result in two bona fide purchasers. BLM asserts, in addition, that Southwestern Petroleum Corp., supra, is not applicable to the present appeal because that case involved an assignment which had been filed for approval prior to lease cancellation.

BLM concludes its response by arguing alternatively that under the doctrine of administrative finality, appellant is foreclosed from claiming an interest in lease NM 33678 now because he failed to raise the

issue when the lease cancellation was on appeal and that appellant has not proven his status as bona fide purchaser.

Appellant answers BLM's response by asserting that BLM's argument wipes out the 90-day filing period allowed by Departmental regulation. Appellant urges that Southwestern Petroleum Corp., supra, stands for the proposition that the date of an assignment is controlling as to bona fide purchaser status and is applicable to his appeal.

Before proceeding to the substance of this appeal, we wish to address BLM's assertion that the doctrine of administrative finality should be invoked against appellant. Under that doctrine, where an appeal has been taken and a final Departmental decision has been reached, the principal of res judicata operates to bar consideration of a second appeal arising from a later proceeding involving the same parties, the same claims, and the same issues. Peabody Coal Co., 36 IBLA 242 (1978). We note that the only thing which is the same in this appeal as that decided in Wayne E. Debord, supra, is that the disposition of oil and gas lease NM 33678 is ultimately involved. Appellant was not a party to the latter appeal nor was he even notified by BLM of the proceedings until after a final decision was reached. The Debord decision involved a wholly separate issue from that now before us. We find that the doctrine of administrative finality is not applicable.

[1] The issue presented to the Board herein is very simply whether an assignee of an oil and gas lease is required to file the assignment with BLM for approval as a condition precedent to being protected as a bona fide purchaser under 30 U.S.C. § 184(h) (1976). We find that the assignee does not have to so file before bona fide purchaser status may accrue.

The statute reads in relevant part as follows:

(2) The right to cancel or forfeit for violation of any of the provisions of [the Mineral Leasing Act] shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease * * * which * * * was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease * * * was acquired, or of his predecessor in title (including the original lessee of the United States) may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

The provision is intended to protect the equities of innocent purchasers of Federal oil and gas leases who acquire their holdings in good faith from the consequences of violations of the Mineral Leasing Act by their predecessors in title and thereby foster development of the oil and gas

resources on the public lands. H. R. Rep. No. 1062, 86th Cong., 1st Sess. reprinted in [1959] U.S. Code Cong. & Adm. News, 2620-21.

The statute requires only that an assignee be a bona fide purchaser and qualified to hold a lease under the Mineral Leasing Act in order to protect his interest. Departmental regulations on bona fide purchasers repeat the language of the statute. See 43 CFR 3102.1-2. Congress intended that the term bona fide purchaser take on the general common law definition, that is, one who acquires an interest in a lease in good faith, for valuable consideration, and without notice of any violation of the law or regulations pertaining to the lease. Southwestern Petroleum Corp., supra at 656.

As both BLM and appellant have noted, the primary case interpreting 30 U.S.C. § 184(h) (1976) is Southwestern Petroleum Corp., supra. We recognize the factual distinction between this case and the appeal before us. In Southwestern Petroleum Corp., supra, the assignment had already been filed with BLM for approval when the lease came into question. We find, however, that under the court's opinion, the fact of filing is incidental to the holding of the case. Although finding that approval of an assignment is not necessary to entitle the assignee to protection under 30 U.S.C. § 184(h) (1976), the court also holds that the date of the assignment as between the lessee and assignee is the point for determining whether an assignee is a bona fide purchaser. Winkler v. Andrus, 614 F.2d 707, 710 n.3, 712 (10th Cir. 1980). The court finds specifically that under the statute the assignee may be recognized as a bona fide purchaser even though the assignor is still the lessee of record with the Federal Government. The court in Southwestern Petroleum Corp., supra at 655-56 states:

The statute provides protection to the bona fide purchaser where the interest of the person from whom the lease was acquired "may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture." 30 U.S.C. § 184(h)(2). The inclusion of the "or may be" phrase contemplates that an interest still may be held by the lessee, and this was the fact in the case at bar. Assignment of the Toles lease had been made by him and filed by Lowe but approval was still pending. The Department recognized Toles as the lessee until approval of the assignment was given. See Departmental Regulation, 43 C.F.R. § 3128.2(c) (1965). * * * Thus the assignment need not have been approved to entitle Lowe to the protection of the amendment. The date of the assignment is the significant date on the notice issue as there we have the entry of a third party into the act. [Emphasis added.]

Similar analysis may be applied in the present case. The assignor of a lease remains the lessee of record obligated to the Federal Government until BLM approves the assignment. 30 U.S.C. § 184a (1976); Otis Energy, Inc., 52 IBLA 316 (1981). At the same time, 30 U.S.C. § 184(h)

(1976) provides bona fide purchaser protection from the date of the assignment of the lease from the lessee to a qualified party. As we believe Southwestern Petroleum Corp., *supra*, makes clear, the status of an assignment with respect to the Federal Government has no bearing on the status of the assignee as a bona fide purchaser. In this way, both the Government and the innocent assignee are protected from discovered wrongdoings of a lessee between the date of an assignment as it is effective between the lessee and assignee and the date of approval when the lessee is no longer responsible to the Government. This arrangement best serves the intent of Congress in that innocent purchasers are protected from the wrongdoings of their predecessors and, at the same time, promotes development of oil and gas resources because the land may remain under lease.

BLM's position that bona fide purchaser protection cannot be recognized unless the assignment has been filed with BLM is out of place in the above arrangement and would negate the very protection for innocent purchasers that Congress intended. Such a requirement would afford an assignee no absolute protection as a bona fide purchaser unless he filed simultaneously with the execution of the assignment. BLM's decision that the determination of bona fide purchaser status cannot occur until filing of an assignment for approval is contrary to 30 U.S.C. § 184(h) (1976) as construed by Southwestern Petroleum Corp., *supra*. Moreover, BLM's interpretation effectively takes away by decision that which it has granted by regulation, the 90-day filing period. BLM should seek some other administrative remedy for the dire consequences predicted if an assignee is given bona fide purchaser status as of the effective date of an assignment rather than trying to limit by decision the bona fide purchaser rights granted by 30 U.S.C. § 184(h) (1976).

There is nothing in the record before us to indicate that appellant was not a bona fide purchaser. He asserts that he in good faith paid \$ 6,000 consideration after verifying the status of the lease and lessee Cobb with BLM on November 5, 1979. BLM has presented no evidence to the contrary and we find that a hearing is therefore not warranted. 30 U.S.C. § 184(i) (1976). Geosearch, Inc., 47 IBLA 39 (1980).

Since we have found appellant to have been a bona fide purchaser of oil and gas lease NM 33678, we will remand the case for approval of appellant's assignment. BLM should notify appellant as to the rental due on the lease for the rental year beginning September 1, 1980. Upon payment of the rental fee BLM shall reinstate oil and gas lease NM 33678 and approve appellant's assignment effective February 1, 1980.

The decision in Wayne E. Debord, *supra*, is hereby modified as to IBLA Docket No. 80-271 to provide for the cancellation of the overriding royalty interest retained by Henry Cobb on assignment rather than the cancellation of oil and gas lease NM 33678.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for approval of appellant's assignment.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Acting Administrative Judge

